



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of
DAIRIKI et al.

Confirmation No. 7579
Atty Docket. No. 46242

Application No. 10/523,106
Application Filed: February 3, 2005

Group Art Unit: 1616
Examiner: Danielle Sullivan

Title: GRANULATED PESTICIDAL COMPOSITION

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June 27, 2008

PRELIMINARY SUBMISSION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Preliminary Submission accompanies a Request for Continued Examination (RCE) filed concurrently herewith and submits a Rule 132 Declaration (attached) to supplement the Amendment filed April 29, 2008, under 37 CFR 1.116 in response to the Office Action dated January 29, 2008. The attached Declaration demonstrates new and unexpected results for the presently claimed invention.

The applicants now further traverse the rejection in the January 29, 2008 Office Action of claims 1-5 under 35 USC 103(a) over Suwa et al., in view of Suzuki et al. and in further view of Deming et al. None of the cited references taken alone or in combination make the presently claimed invention to be obvious.

The applicants continue to maintain that the Office Action shows a misunderstanding of combined pesticidal ingredients tristyrylphenyl ether with ethylene oxide and sodium ligninsulfonate in the cited reference, Suzuki et al., wherein tristyryl phenyl ether is added to ethylene oxide (Examples 1 to 3, Suzuki). As previously pointed out, this compound is entirely different from "a polyoxyethylene tristyrylphenyl ether sulfate salt" or "a polyoxyethylene

tristyrylphenyl ether phosphate salt" of the presently claimed invention.

Polyoxyethylene tristyrylphenyl ether sulfate salt and phosphate salt have sulfate or phosphate group which are covalently linked to polyoxyethylene tristyrylphenyl ether, while "tristyryl phenyl ether added thereon with ethylene oxide" does not have such a group. As a result, the applicants assert that a person of ordinary skill in the art would understand that there are significant differences in the actions of the compounds as an ingredient of the compositions. Thus, Suzuki et al. does not disclose any teaching or provide any suggestion regarding the combination of a lignosulfonate surfactant and polyoxyethylene tristyrylphenyl ether sulfate salt or phosphate salt.

Now, the applicants have performed experiments comparing water dispersible granules prepared according to the presently claimed invention, with water dispersible granules prepared according to the cited references of Suwa et al., Suzuki et al. and Deming et al. A description of the experiments and experimental results are set forth in the Rule 132 Declaration attached hereto. The experimental results clearly show new, unexpected and superior results for the presently claimed invention.

The Examiner is asked to carefully study the attached Declaration.

Referring to the Declaration, the table on page 2 sets forth the constituents of Sample 1, which represents the presently claimed invention and Sample 2, which represents the cited prior art. These samples were tested for resulting self-dispersibility, relative mixing required for dispersion in water, and resulting sediment volume. The test results at pages 3-4 show Sample 1, representing the presently claimed invention, to have the significantly improved dispersibility of the formulated

granules compared to the dispersibility of Sample 2, representing the cited references.

Please note that none of the cited references discloses the two recited components: a lignosulfonate surfactant (with any degree of sulfonation) and a sulfate or phosphate salt of a polyoxyalkylene arylphenyl ether of the presently claimed invention. In view of the foregoing, the constituents of Sample 2 were chosen as being closer to the presently claimed composition than any compositions disclosed in the cited references. This is particularly so, because the difference between Samples 1 and 2 is the degree of sulfonation of the lignosulfonate surfactant (4.5 and 0.5).

As shown in the Rule 132 Declaration, Sample 1 exhibits significantly improved dispersibility, compared with that of Sample 2. The applicants point out that when the difference in the degree of sulfonation between tested samples is reduced, an improvement as measured in a comparative test would be expected to also be reduced correspondingly. However, the applicants note that the comparative test, Sample 2, employed in the Declaration, is adequately optimized to demonstrate the superior results provided from the degree of sulfonation of a lignosulfonate surfactant, which could be predicted by a person skilled in the art based on descriptions in the cited references.

Please note that MPEP 2143.02 states the following:

"A rationale to support a conclusion that a claim would have been obvious is that all of the claimed elements were known in the prior art, and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to

one of ordinary skill in the art."

As pointed out above, the Sample 1 experimental results in the Declaration clearly demonstrate that the compositions of the presently claimed invention have new, unexpected and superior properties in dispersibility compared with the results for Sample 2. While the January 29 2008, Office Action states that the three cited references each discloses one of the components of the presently claimed invention, they do not disclose any teaching or suggestion that would lead a person of ordinary skill in the art to combine the constituents to result in the presently claimed invention.

The applicants submit that the Rule 132 Declaration makes clear that the result of superior dispersibility provided by the combination of the components of the presently claimed invention would not be expected by a person skilled in the art, nor would there be motivation to try to make the presently claimed invention, based on the disclosures of the cited references.

The applicants assert that only with impermissible hindsight, could one combine the components of the presently claimed invention, expecting the superior dispersibility demonstrated in the Rule 132 Declaration.

Accordingly, the applicants submit that the presently claimed invention is fully allowable under Section 103(a) in view of the cited art.